KELLEY DRYE & WARREN LLP
A LIMITED LIABILITY PARTNERSHIP INCLUDING PROFESSIONAL ASSOCIATIONS
1200 19TH STREET, N.W.
SUITE 500
WASHINGTON, D. C. 20036
(202) 955-9600

FACSIMILE
(202) 955-9792

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

September 25, 1998

Ms. Magalie R. Salas
Secretary
Federal Communications Commission
1919 M Street, N.W.
Room 222
Washington, D.C. 20554

Re: Comments of MGC Communications, Inc. – CC Docket No. 98-147

Dear Ms. Salas:

Pursuant to the Notice of Proposed Rulemaking issued in the above-referenced docket, on behalf of MGC Communications, Inc. ("MGC"), I am hereby filing and original and 4 copies of MGC's comments. In addition, I am submitting electronic copies of this filing on diskette with Ms. Janice Myles in the Common Carrier Bureau and ITS. The diskettes are in "read only" mode and have been labeled in accordance with the Commission's instructions.

IMPORTANT: ALTHOUGH WE BELIEVE THE DISKETTES TO BE UNINFECTED, OUR COMPUTER SYSTEM HAS BEEN PLAGUED BY A COMPUTER VIRUS THIS WEEK. THEREFORE, PLEASE HAVE THE DISKETTES SCANNED FOR VIRUSES PRIOR TO UPLOADING THEM TO YOUR SYSTEM.

Enclosed please also find a duplicate of this filing. Please date stamp the duplicate upon receipt and return it in the envelope provided.

Sincerely,

Erin M. Reilly

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Before the
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OFFICE OF THE SECRETARY

In the Matter of	)	
	)	
Deployment of Wireline	)	
Services Offering Advanced	)	CC Docket No. 98-147
Telecommunications Capability	)	

COMMENTS OF MGC COMMUNICATIONS, INC.

Kent F. Heyman, General Counsel
Richard E. Heatter, Associate Counsel
Scott A. Sarem, Senior Director, Strategic Relations
MGC COMMUNICATIONS, INC.
3301 N. Buffalo Drive
Las Vegas, NV 89129
(702) 310-1000

Jonathan E. Canis
Erin M. Reilly
KELLEY DRYE & WARREN LLP
1200 19th Street, N.W.
Suite 500
Washington, D.C. 20036
(202) 955-9600

September 25, 1998

Counsel for
MGC COMMUNICATIONS, INC.

SUMMARY

MGC Communications, Inc. ("MGC") is a rapidly growing integrated communications services provider offering facilities-based switched local and long distance, voice and data services to small business and residential users. MGC believes the Commission can and must play an instrumental role in accelerating competition for telecommunications services and thereby accelerating the implementation of new technologies.

To this end, MGC strongly suggests that the Commission develop and implement detailed national rules that will promote the deployment of facilities-based competition. The Commission should adopt clear national standards for both collocation and local loop unbundling in order to ensure the proliferation of nondiscriminatory collocation arrangements and transparent access to ILEC unbundled loops for the provision of advanced telecommunications services. Specifically, in order to eliminate the monopoly control over bottleneck facilities that the ILECs continue to maintain, MGC recommends that the Commission implement uniform rules that will ease existing collocation restrictions imposed on competitive local exchange carriers ("CLECs"). Further, the Commission also should create rules that eliminate restrictions that tend to slow the ability of CLECs to offer advanced telecommunications services.

ILECs have been active in trying to deter CLECs from actively pursuing more economically feasible network topology, in direct contravention of the ILECs' statutory obligation to offer cost efficient and flexible collocation arrangements. Accordingly, some ILECs will not allow CLECs to collocate certain equipment in ILEC central offices, and will not allow CLECs to design their networks in an efficient manner through the use of leased transport from one CLEC collocation arrangement to another (often referred to as "back-door trunking"). Specific collocation standards are required to combat such discrimination, as well as to ensure

competition and promote the deployment of advanced telecommunications products and services. The Commission should require ILECs to permit collocation of switching equipment and other state-of-the-art equipment to bring new and innovative services to both residential and business users.

To optimize collocation space and reduce costs and delays ILECs should be held to strict standards. ILECs should be required (1) to revise, expand and clearly define what constitutes potentially usable space for collocation, (2) identify usable collocation space through an independent audit, (3) offer space in increments less than the customary 100 square feet. Moreover, CLECs should have the ability to choose the type of collocation (physical or virtual), maintain their own equipment, allowing a flexible growth factor. Alternative types of collocation such as cageless and cage sharing should be permitted.

The Commission also should implement rules to simplify the application process and to permit CLECs to have a greater control over build-out costs through better management and auditing procedures. Space cost sharing systems should be implemented in lieu of the current customary practice, whereby a single CLEC is force to absorb all of the initial costs. Power should be charged on a usage rather than capacity basis.

Moreover, unreasonable delay intervals in the collocation process should be minimized. Intervals from application processing to build-out should be reasonable, and arcane state rules that are obsolete and inherently anti-competitive should be eliminated.

MGC does not believe that the Commission's proposal to permit ILECs to provide advanced telecommunications services through a separate affiliate non-encumbered by ILEC statutory requirements goes far enough. In MGC's opinion, nothing less than a full wholesale/resale split, similar to that proposed by LCI earlier this year, will be effective.

The most pervasive means an ILEC has to frustrate true competition is through the loop provisioning process. CLECs such as MGC rely on the ILEC to provide it with access to unbundled local loops and unbundled transport in order to deliver calls to residential and business customers. ILECs, however, generally devote a minimal amount of resources to the wholesale provisioning aspect of their business. As a result, CLECs do not get the service that they need -- and that ILECs statutorily are required to provide -- to enable them to compete on a level playing field. Moreover, ILECs have a clear incentive to slow down the provisioning process because if the ILEC does not provision an unbundled loop in a timely manner, it not only continues to retain its current customer, but, of far greater importance, it succeeds in undermining the CLEC's credibility to provide quality local telephone service to customers.

In order to change these existing practices, the Commission must establish clear mandates that will compel the ILECs to engage in consistent, reliable, and reasonable uniform loop provisioning practices. Specifically, the Commission should require ILECs to develop uniform centralized electronic ordering systems, provide CLECs with access to adequate numbers of properly-trained customer account personnel to process CLEC orders, and establish national standards to govern the conversion process. MGC also recommends that the Commission impose minimum performance standards on ILECs to induce the type of reasonable and nondiscriminatory behavior that heretofore has been absent from the loop provisioning process, and back these standards up with enforcement penalties.

Finally, the commission should advance competition by establishing rules that encourage the development of IP telephony. Making available to all Americans through the cost-effective benefits of IP-telephony should be one of the Commission's primary goals in this proceeding.

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COMMENTS OF MGC COMMUNICATIONS, INC.

MGC Communications, Inc. ("MGC"), by its undersigned counsel, hereby submits the following comments in response to the Commission's *Notice of Proposed Rulemaking* ("NPRM") in the above-captioned docket.[1]

I. INTRODUCTION

MGC is a rapidly growing integrated communications services provider offering facilities-based switched local and long distance voice and data services to small business and residential users. MGC began providing local and long distance service in Las Vegas, Nevada in December, 1996 as a switched local exchange service provider and subsequently expanded service to selected suburban areas of Los Angeles, California and Atlanta, Georgia. MGC will begin offering local and long distance service to customers in Illinois and Florida before the end of 1998, and plans to enter new markets in Texas and Ohio in 1999.

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[1] *In re Deployment of Wireline Services Offering Advanced Telecommunications Capability, Notice of Proposed Rulemaking*, CC Docket No. 98-147 (rel. Aug. 7, 1998) ("*NPRM.*")

MGC applauds the FCC's efforts in trying to ensure that the Telecommunications Act of 1996 ("1996 Act") spawns true competition, and in comprehensively assessing the status of the deployment of advanced telecommunications services in the marketplace in order to devise appropriate and much-needed regulatory solutions. MGC believes that it can provide the Commission with substantial information, based on its years of experience as a provider of competitive local exchange services, that the Commission may use to realistically assess the current regulatory environment and construct the proper framework to ensure the proliferation of advanced services to all Americans. MGC appreciates this opportunity to express its views to the Commission on such an significant issue.

The issues identified in the *NPRM* are directly related to enhancing MGC's execution of its business plan in several ways. First, MGC plans to develop an IP-based telephony network that will help MGC provide advanced telecommunications products and services to residential and small to medium sized businesses throughout the United States. Because the Commission has asked for comments to help it create guidelines for implementing local competition and developing and deploying advanced services, MGC has described how the Commission may help expedite the implementation of their Congressional mandate. Next, MGC faces many challenges when it attempts to collocate its equipment in ILEC central offices. MGC must be able to effectively collocate in an ILEC central office to gain access to unbundled local loops. Therefore, the Commission has the opportunity to create a set of national standards that will compel ILECs to perform at certain levels to ensure that the residential telecommunications customer is in a position to take advantage of telecommunications deregulation. Finally, MGC faces many challenges when it orders and provisions local loops from ILECs. The Commission has the opportunity to create rules that will require ILECs to adhere to national provisioning

standards that will allow CLECs to compete for local market share on national basis. Again, MGC appreciates that the Commission is committed to ensuring that local telecommunications competition flourishes and benefits the American consumer.

The 1996 Act was enacted to bring competitive pricing of local phone service as well as to promote the development and deployment of technology to the American consumer. However, a variety of factors have impeded the emergence of true competition, as well as the deployment of technology. The industry finds itself awash with new technologies, presently capable of increasing telecommunications services exponentially at lower costs to consumers. However, these benefits can and will occur only in a competitive market. Using the power given to it under the 1996 Act, the Commission should act to ensure that the local telephone marketplace is truly competitive, and is conducive to investment, innovation, and meeting the needs of the consumer.[2] MGC believes that the Commission must play an instrumental role in enabling the development of competition in the local exchange, thereby accelerating the implementation of new technologies.

Initially, both Congress and the Commission envisioned that local competition would develop through resale. However, as competition in the local exchange marketplace has developed, many new entrants have discovered that resale is neither practical nor profitable. As local competition develops, facilities-based competitive local exchange carriers ("CLECs") are the entities left to shoulder the laboring oar in the penetration of the local service monopolies. Additionally, facilities-based CLECs are spearheading the movement toward the ubiquitous provision of advanced telecommunications services to customers. In the absence of clear, uniform rules calculated to compel ILEC performance, viable competition in the local exchange and the widespread provision of advanced broadband services to local exchange customers will

not soon materialize. In these comments, MGC will describe how ILECs routinely adopt unreasonable positions to frustrate competition in the local exchange, and how many ILECs construe laws and regulatory policies as narrowly as possible in order to preserve their monopolies.

Therefore, MGC strongly suggests that the Commission develop and implement detailed national rules for collocation and loop provisioning that will promote the deployment of facilities-based competition. Specifically, in order to eliminate the monopoly control over bottleneck facilities that the ILECs continue to maintain, MGC recommends that the Commission implement uniform rules that will ease existing collocation restrictions imposed on competitive local exchange carriers ("CLECs"). Such rules should accomplish the following:

- Permit switching equipment to be collocated for the provision of basic voice service as well as for advanced telecommunications services;
- Allow for efficient networking from collocation arrangements;
- Require cost-sharing arrangements and impose limitations on preparation intervals for collocation build out;
- Eliminate amperage requirements and mandate that ILECs can assess charges only for power actually used;
- Compel ILECs to treat their affiliates in a nondiscriminatory manner.

The Commission also should eliminate restrictions that tend to slow the ability of CLECs to offer advanced telecommunications services by creating rules that:

- Change current Central Office Collocation Rules;
- Create rules that will address the technical advances being made in the communications industry;
- Permit back-door trunking.

Additionally, the Commission should impose national performance standards on ILECs to assist CLECs in penetrating the local service market in a more timely manner. To this end, the Commission should adopt rules that provide for:

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[2] *NPRM* at ¶ 2.

- standard provisioning intervals;
- standard ordering procedures;
- standard electronic ordering;
- penalties for non-compliance with the standards.

The Commission also should use its mandate to provide ILECs with true consequences where they act to frustrate competition through the provisioning process. Otherwise, the ILECs will continue to benefit through their own miscues and retain customers while fueling a perception of CLECs as not being able to provision local service effectively

Finally, MGC recommends that the Commission use its mandate to stimulate the development and deployment of advanced new technology such as IP-Telephony. MGC has developed an IP-Telephony product that will take advantage of Internet technology to create efficient telecommunications networks. While companies like MGC are ready to deploy IP-Telephony, the current regulatory structure makes it extremely difficult for MGC to deploy this service on a nationwide basis because of restrictions on the types of equipment that can be collocated. The immediate benefit of this kind of technology is that it will provide both residential and business consumers alike with a less expensive alternative for local, long distance, and enhanced telecommunications products and services. Therefore, when the Commission creates an environment where companies such as MGC are able to deploy advanced telecommunications services on an economic basis, free of burdensome regulatory policies and/or unwarranted ILEC interference, the American residential consumer will directly benefit by having access to affordable and high speed telecommunications products and services. MGC believes that it is the residential consumer that the 1996 Act sought primarily to benefit, and yet, for the most part, remains untouched by many of the recent advances in broadband telecommunications services.

II. MGC PROVIDES COMPETITIVE LOCAL TELEPHONE SERVICE IN THE MANNER ENVISIONED BY CONGRESS UNDER THE 1996 ACT.

MGC provides local, long distance, and enhanced services to residential and small to medium sized business consumers. MGC's network strategy consists of purchasing and deploying switching equipment, collocating interconnection equipment in ILECs central offices ("COs"), and leasing fiber optic transmission capacity from ILECs and other providers of communications transport services.

In addition to providing basic voice services, MGC's network platform also can be used to support high speed data services. MGC plans to introduce a portfolio of high speed data services for remote Local Area Network ("LAN") and Internet access utilizing new digital subscriber line ("DSL") modems. MGC recently has deployed a dedicated leased ATM network backbone connecting its service territories, and has installed Nortel's Internet Thruway ("ITW") hardware product, which eliminates the need for an Internet Service Provider ("ISP") to install traditional terminating modem hardware.

MGC offers a true choice for local telephone service to consumers. MGC has deployed collocation equipment in its initial market, Las Vegas, that covers 90% of the local service market, and has comparable build-outs in progress in its other territories. MGC also has purchased over 35,000 unbundled loops in the Nevada, California and Georgia markets where it currently provides service. This makes MGC one of the largest purchasers of unbundled loops in the United States. MGC therefore is providing a true facilities-based alternative to the ILEC for consumers who seek to receive superior customer service as well as more affordable prices, and believes that it is uniquely positioned to share its practical business experiences with the Commission to help it to understand the realities of the operational and customer care issues which challenge CLECs in markets that are not yet truly competitive.

When Congress enacted the 1996 Act, it intended to divest the ILECs of their local service monopolies and to create a competitive environment that would help the American consumer receive more affordable and technologically advanced telecommunications products and services. MGC focuses on delivering quality services to residential customers and therefore is one of the only CLECs in the United States that is providing local telephone service in the manner that Congress truly envisioned. Because MGC utilizes its own switching facilities and purchases unbundled loops and transport from the ILEC's to facilitate local service, MGC's telecommunications network generally mirrors the ILEC network in each local access transport area ("LATA") in which MGC provides service. Moreover, because MGC deploys a network that replicates the ILEC's network, MGC truly offers a viable, ubiquitous, alternative to ILEC local service, and, for the most part, can offer service to all of the ILEC customers over the same network provided by the ILEC.

Accordingly, MGC is uniquely situated to offer competitive local telephone service to suburban areas, primarily comprised of residential customers and small to mid-size businesses that are not in the major commerce centers. Rather than competing for the large business accounts sought by most carriers, MGC focuses on the largely forgotten residential customer -- and strives to provide that consumer with a true choice.

III. SPECIFIC NATIONAL COLLOCATION STANDARDS ARE REQUIRED TO COMBAT ILEC DISCRIMINATORY ACTIONS, TO ENSURE THE DEVELOPMENT OF GENUINE COMPETITION AND TO PROMOTE THE DEPLOYMENT OF ADVANCED TELECOMMUNICATIONS PRODUCTS AND SERVICES. (*NPRM* ¶¶ 122-125).

The Commission should adopt clear national standards for collocation and local loop unbundling in order to ensure the proliferation of nondiscriminatory collocation arrangements and transparent access to ILEC unbundled loops for the provision of advanced

telecommunications services. Explicit and enforceable national standards will make inroads into the ILECs' existing and overwhelming competitive advantage over CLECs in the local exchange market by curbing the ILECs' ability to employ anti-competitive tactics to thwart the development of competitors. Moreover, uniform rules will eliminate many of the arcane and disparate state rules that often serve to discourage CLECs from competing.

In addition to the implementation of national standards, the Commission should ensure that its "Rocket Docket" procedures are made fully available for dispute resolution of interconnection, collocation and unbundling issues between CLECs and ILECs. An accelerated docket will serve not only to enforce the uniform standards promulgated by the Commission, it will assist CLECs in obtaining a timely and meaningful resolution to their disputes with ILECs, rather than having to wait the long months, or even years, that state commissions often take to render final rulings.

A. LECs Have a Statutory Obligation to Offer Cost Efficient and Flexible Collocation Arrangements. (NPRM at ¶¶ 129-150).

Many aspects of the collocation process must be improved in order for CLECs like MGC to receive equitable and fair treatment by the ILECs. As the Commission concluded in its *Memorandum Opinion & Order*, "[t]he availability of cost efficient collocation arrangements is essential for the deployment of advanced services by facilities-based competing providers."[3] The ILECs have a statutory obligation under Section 251(c)(6) to provide its competitors with collocation "[o]n rates, terms and conditions that are just, reasonable, and nondiscriminatory, for physical collocation of equipment necessary for interconnection or access to unbundled network

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[3] *In re Deployment of Wireline Services Offering Advanced Telecommunications Capability, Memorandum Opinion & Order*, CC Docket No. 98-147 at ¶ 64 (rel. Aug. 7. 1998).

elements . . . ."[4] The Commission has interpreted this obligation to require equipment *used for* the purpose of interconnection or access to unbundled network elements, concluding that Congress' use of the term "necessary" does not mean "indispensable," but rather, "used" or "useful."[5] While the Commission clearly has foreseen that collocators should be able to collocate equipment of their own choosing, the Commission's current rules do not require ILECs to collocate any equipment without restriction, nor to collocate switching equipment or equipment used to provide enhanced services. *Id.* at 15794-95.

MGC, however, believes that such restrictions should be completely removed, and that the Commission should issue specific rules designed to permit the collocation of any piece of reasonably-sized equipment in the ILECs central office, at the CLEC's option, whether used for the provision of advanced telecommunications services, basic switched voice or any other telecommunications service. MGC believes that the sole restriction on collocation equipment should be space size, and that all claims of space limitations/exhaustion are required to be independently verified.

1. Incumbent LECs Should Not Be Permitted to Impede the Provision of Advanced Services by Competing Carriers By Imposing Unnecessary Restrictions on the Type of Equipment that Competing Carriers May Collocate. (NPRM at ¶¶ 129-132.)

As the advent of advanced communications services continues, ILECs are aware of the economies of scale to be achieved by deploying technologically advanced telecommunications networks. Recent advances in telecommunications technology have resulted in the integration of multiple functions into a single unit of telecommunications equipment. This trend has benefited service providers and their customers by reducing costs, promoting efficient network design, and

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4 47 U.S.C. § 251(c)(6).

5 *Local Competition Order* at 15794.

expanding the range of possible service offerings.[6] To this end, ILECs have actively attempted to deter CLECs from pursuing more economically feasible network topology, in direct contravention of the ILECs' statutory obligation to offer cost efficient and flexible collocation arrangements.[7] Accordingly, some ILECs will not allow CLECs to collocate certain equipment in ILEC central offices, and will not allow CLECs to design their networks in an efficient manner through the use of leased transport from one CLEC collocation arrangement to another (often referred to as "back-door trunking").

For example, inexplicably, some ILECs permit MGC to collocate remote switching modules ("RSMs") in their central offices, while others refuse to allow such arrangements.[8] To date, none of the ILECs that refuse to collocate RSMs for MGC has provided MGC with a justification for such a prohibition, other than to say, "we don't have to". Moreover, even when an ILEC allows for the collocation of RSMs, it either requires MGC to disable the switching functionality, or it precludes inter-office switching. In such a case, the ILEC requires MGC to engage in the inefficient routing of traffic to its host switch from its collocated "switches," rather than from collocated switch to collocated switch. Because remote switching units will drastically reduce the cost of doing business for CLECs, it is important that a national standard allowing for the collocation of switching equipment be mandated by the Commission. The CLEC should be able to install any equipment it chooses in its physical collocation space, so long as the equipment presents no threat to safety or possibly of network degradation. It goes without saying that ILECs that currently refuse to allow collocation of switching equipment do

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6 *NPRM* at ¶ 128.

7 *Id. See also Memorandum Opinion & Order* at ¶ 64.

8 *See* Attachment A, Declaration of Nield J. Montgomery, for a specific example of how one ILEC has frustrated and delayed competition by taking an unreasonable and untenable position regarding the collocation of remote switching equipment.

so for the stated reason that they are not required to. They will continue to advance this position unless compelled otherwise by the Commission.

Moreover, where ILECs are permitted to prevent CLECs from collocating technologically advanced equipment, hidden costs are created for the CLEC. ILECs are able to employ tactics that influence the speed with which their competitors their competitors are able to provide service. When time to market is of concern, as certainly is the case in this industry, slowing down one's competitor can be a very effective tactic. Moreover, if an ILEC can increase a competitor's market costs, the ILEC's competitive position is enhanced. And, if costs become particularly prohibitive (as can easily happen with residential service), the competitor is forced to exit that market. If one looks objectively at what the ILECs have done and continue to do, their pattern of behavior evidences clearly the application of both tactics, albeit often times well-disguised, and clothed with thinly supported legal rationales.

Companies such as MGC are engaged in a continuous attempt to develop efficient networks so that they may offer their customers affordable yet innovative advanced communications products and services. The Commission should require ILECs to allow CLECs to continue to be innovative and to offer consumers a higher quality, competitive choice by allowing the collocation of switching and other state-of-the-art equipment. Clearly, a national standard requiring uniform compliance by ILECs in this regard would assist greatly in fostering the development of local competition. At a minimum, if CLEC equipment is NEBS compliant, there should be a conclusive presumption of suitability for collocation. The Commission, therefore, must adopt rules requiring ILECs to permit the collocation of any type of CLEC equipment necessary for the deployment of local switching as well as advanced broadband telecommunications services, including IP telephony.

2. Measures that Optimize the Available Collocation Space and Reduce Costs and Delays for Competing Providers Are Consistent with an ILEC's Obligation Under the 1996 Act and the Commission's Rules. (NPRM ¶¶ 137-149.)

In certain areas in which MGC operates, it has become apparent that space for collocation inside ILEC central offices rapidly is becoming a scarce commodity. For example, due to space limitations, MGC's applications for physical or virtual collocation have been rejected by GTE in California, by Ameritech in Illinois, and by Sprint in Nevada. In addition, MGC's applications for physical collocation have been rejected by both GTE and Pacific Bell in California, by BellSouth in Georgia and Florida, and by Ameritech in Illinois, all due to space exhaustion. Moreover, as the CLEC industry continues to grow, it seems clear that space for both physical collocation and perhaps even virtual collocation, will become increasingly scarce.

The following are specific space optimization measures that MGC recommends that the Commission adopt in order to ensure that the ILEC's are able to satisfy their statutory obligation to provide their competitors with adequate reasonable and nondiscriminatory access to the ILEC network.

a) Physical Collocation

Despite the higher up-front costs associated with physical collocation, most CLECs, including MGC, prefer physical collocation because it provides the following: (1) the ability for a CLEC to maintain and service its own equipment; (2) a more identifiable and predictable ability to grow, by adding their own desired equipment, as necessary; (3) increased security (*i.e.* no one but the CLEC has access to the equipment inside a cage); and (4) a reduction in the amount of the CLEC's reliance on the ILEC to provide maintenance and security for the collocated equipment. In order to be able to better accommodate CLECs' growing demands for

physical collocation space, and in order to increase the amount of usable space available, MGC requests that the Commission adopt the following recommendations.

First, the Commission should require ILECs to revise, expand and clearly define their current interpretation of what constitutes potentially usable space for collocation. For instance, there are many areas within a central office that might be suitable for physical collocation, but that the ILECs have declared unusable -- for a variety of reasons.

ILECs should agree that all space within a central office ("CO") is potentially usable telecommunications space. There is no more valuable use of space within a CO than for telecommunications purposes, as opposed to, for example, office space. The only way to access the local loops served by a CO is by having a presence inside the CO. Other functions, such as office work, can be suitably performed elsewhere. There are often areas within a CO that could be suitable for physical collocation, but the ILEC has determined that it is unusable for a variety of reasons. In many cases, if it were the ILEC that needed to utilize this space, efforts would likely be made to overcome whatever barrier the ILEC cites as preventing this space from being used or converted for use for telecommunications purposes

Many COs do have "available" space which could be easily rendered suitable for telecommunications purposes. Often this preparation would include extending DC power or installing sufficient HVAC to serve that area of the CO. This work can be very costly, but should be done by the ILEC whenever a CO runs out of available telecommunications space for physical collocation. Most ILECs pass this cost on to the CLEC as a non-recurring charge. Therefore, MGC must bear the cost for the ILEC to convert an area of its COs that was previously not generating any revenue (if used for office space, for example) into space that permits MGC to collocate. This space then permits MGC to access the loops served from that

CO and interconnect with the ILEC network. However, it also allows the ILEC to generate profits through its charges for services rendered to the CLEC. In other words, the CLEC bears the cost for creating a profit center for the ILEC. And, if the CLEC pulls out of the market, the ILEC can re-let this space to other CLECs which get the benefit of the cost borne by the first LEC, but without having to share in the actual costs. This is unjust. The ILEC should be forced to build out as much space for telecommunications purposes as physically possible, upon request, and the cost for such work should be recovered though the assessment of rational recurring charges to the CLECs (and other collocators) that utilize this space over time.

ILECs should be compelled to explicitly define their interpretation of "usable space," so as to diminish their ability to easily dismiss CLEC collocation requests on the basis of vague and unsubstantiated claims of space exhaustion.

Second, the Commission should require every ILEC to identify usable collocation space within a CO through an independent audit. An audit will serve to determine, for example, whether an ILEC has available space in a CO due to the replacement of analog switches with the much smaller digital switches. In other cases, an audit may determine the existence of obsolete equipment inside a central office – equipment that is no longer being used, but that the ILEC, for a variety of reasons, has not yet removed. The audit should be performed by an independent and knowledgeable third party to determine which ILEC offices have physical collocation space that presently is available, or, alternatively, suitable space that easily could be made available.

Third, the Commission should require ILECs to offer space in COs in increments other than the customary one hundred (100) square feet. Offering variable-sized spaces would enable increased numbers of CLECs to collocate in a single CO. For example, one CLEC may only require fifty (50) square feet of space. If this CLEC were permitted to lease this limited amount

only, an additional fifty (50) square feet of space could be available for another carrier, who otherwise may not have had available space. MGC therefore recommends that the Commission require ILECs to reduce their existing minimum space requirements from the customary one hundred (100) square feet increments currently offered to a more reasonable increment, such as the thirty-five (35) square feet increment recently proposed by Southwestern Bell Telephone ("SBC") in Texas, or the twenty-five (25) square feet increment proposed by Bell Atlantic/NYNEX in New York.

b) Virtual Collocation

As compared to physical collocation, virtual collocation is a more efficient way of utilizing space in a central office. Under a virtual collocation arrangement, space is allocated by permitting carriers to collocate their equipment in individual bays on existing ILEC equipment racks. Unfortunately, virtual collocation has significant drawbacks, such as denying carriers the ability to service and maintain their own equipment, limiting carriers' opportunity to increase the size and the amount of collocated equipment, and expense.

Apart from having its fate in the hands of its competitor, in a virtual collocation, the CLEC must provide training for ILEC technicians. This can be especially expensive when the CLEC deploys state of the art equipment, not yet deployed by the ILEC. For example, MGC was required to train over fifty (50) technicians in eleven (11) BellSouth COs where MGC is currently virtually collocated. The costs included paying the salaries of these employees for one day, as well as the cost of training materials and other costs paid to the manufacturer of the equipment utilized by MGC.

In virtual collocation, ILEC employees have free access to CLEC equipment. The ability to sabotage or purposely damage the CLECs equipment is a risk that is perceived as real by the

CLECs since the ILEC is its biggest competitor. The ILEC would never permit a CLEC to perform unsupervised maintenance on ILEC equipment in a CO. Adjustments to typical virtual collocation procedures may make it a suitable alternative for CLECs. MGC believes that, if implemented, the following changes would make virtual a more attractive alternative for CLECs than it is today.

First, CLECs should have the ability to choose whether to enter into a physical or a virtual collocation arrangement. In the case of BellSouth, Ameritech and Pacific Bell, MGC has the option to enter into a virtual collocation arrangement, even if physical space is available. However, GTE will only permit MGC to engage in virtual collocation where there is no physical space available, or, on rare occasions where it has determined that the cost for physical is extraordinarily high. GTE's policy is flawed. CLECs always should have the option to choose whether virtual or physical collocation best suits their business plans.

Second, under a virtual collocation arrangement, CLECs should be permitted to maintain their own equipment. This is referred to by some in the industry as "cageless" collocation. In Las Vegas, Sprint permits MGC to perform its own maintenance; GTE, BellSouth and Ameritech do not permit this to occur.[9] The ability of a CLEC to perform its own maintenance and service its own equipment, will enable it to have greater and more direct control over its operational performance. Moreover, such an arrangement will eliminate the requirement that a CLEC rely on the performance of ILEC employees who do not have the same incentives to properly and promptly make any necessary repairs to non-functioning CLEC equipment.

Third, a virtual collocation arrangement should allow CLECs to plan future in order to accommodate future growth. Existing ILEC virtual collocation arrangements prevent CLECs

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[9] MGC has not applied for virtual collocation with Pacific Bell, but its understanding is that Pacific Bell is required to perform any maintenance required.

such as MGC from obtaining information, at the time of their application, about their ability to expand their collocated equipment in the future. CLECs thus are forced to re-apply, at some point in the future, in order to receive a determination as to whether space exists. This lack of information regarding capacity for future growth clearly impacts a carrier's ability to commit to a virtual collocation arrangement. If MGC was permitted to know, before it contracted with an ILEC for a virtual collocation arrangement, that there was not enough space in a central office for growth, this information would have a profound impact on its decision to collocate in that office.

The need for an independent space audit also exists in the case of virtual collocations. MGC has been informed by ILECs in some cases that no space exists for virtual collocation.

Finally, the additional costs and delays associated with a virtual collocation arrangement should be minimized. Virtual collocation is often more expensive than a physical collocation arrangement, since a CLEC must pay to have the ILEC trained in order to properly maintain the equipment. For example, If MGC wishes to deploy IP-compatible equipment, it is conceivable that MGC will be forced to train ILEC personnel on equipment in advance of the ILEC's own deployment of such equipment. In effect, therefore, MGC would be underwriting a portion of the ILEC's deployment cost.

While physical and virtual are the predominant collocation methods, there are other types of collocation that should be permitted by all ILECs. Common area collocation permits multiple collocators to share a large dedicated and secured area. Under this scenario, multiple carriers share an enlarged physical cage within a CO. The advantages of this form of collocation is that CLECs can enjoy the benefits of physical collocation without having to lease the customary minimum of one hundred (100) square feet of space. Pacific Bell offers a limited form of

common area collocation which is called "shared" collocation." In shared collocation, there may be up to three collocators sharing a 100 square foot cage. MGC has utilized this form of collocation at times when available, but due to many restrictions imposed by Pacific Bell, it is often not an available alternative. Adjacent collocation is another form of collocation that should be permitted in all cases. Adjacent collocation can take two forms: on-site (on CO property; typically the parking lot) and off-site (on property located near the CO). The customary way to collocate in this manner is through the construction of a controlled environment underground vault or an above ground trailer or hut. The CLEC can house its equipment inside these units and gain access to the CO loops by either laying fiber to a manhole outside of the CO or with a copper interface.

c) Audits and Inspections

The importance of permitting independent audits and inspections by CLECs cannot be overstated. During the 271 Collaborative Process sponsored by the California Public Utilities Commission ("CPUC"), which was reviewing Pacific Bell's draft COMMISSION petition for inter-LATA authority, Pacific Bell divulged facts suggesting that it was attempting to frustrate competition in California. For example, Pacific Bell flatly stated that fifty-nine (59) of its central offices did not have enough space to provide CLECs with collocation. When prompted by the CPUC to conduct further inquiry, however, Pacific Bell found space in all offices where space previously had been denied.

This example clearly illustrates the need for an audit of space in all instances where an ILEC denies a CLECs application for collocation due to claims of space or capacity exhaustion.